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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
AT SPOKANE

THE LAMAR COMPANY, LLC,

Plaintiffs,

v.

CONTINENTAL CASUALTY  
COMPANY, a member of the CNA  
Insurance Companies, and MICHAEL H.  
RUNYAN,

Defendants.

NO. CV-05-320-AAM

SECOND AMENDED  
COMPLAINT

NOW COMES complainant, The Lamar Company, LLC, ("Lamar")  
successor by merger with The Lamar Corporation, who respectfully avers that:

**I. THE PARTIES**

1.1 Complainant Lamar is a Louisiana limited liability company with its  
principal place of business in Louisiana and who is successor by merger to The  
Lamar Corporation.

SECOND AMENDED COMPLAINT: 1

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1 1.2 Defendant Continental Casualty Company ("CNA") is a member of  
2 the CNA Insurance Companies. It is an insurance company organized under the  
3 laws of the State of Illinois with its primary place of business located in the State  
4 of Illinois.  
5

6 1.3 Defendant Michael H. Runyan ("Runyan") is a person residing in  
7 King County, Washington. At all times mentioned herein and pertinent hereto,  
8 Runyan has been an attorney practicing in Washington.  
9

10 1.4 Lamar's claims and causes of action asserted against Runyan herein  
11 are made in the alternative based on Runyan's acts and omissions in his capacity as  
12 CNA's agent and/or in his capacity as a licensed attorney.  
13

## 14 **II. JURISDICTION, VENUE, AND CHOICE OF LAW**

15 2.1 This Court has original jurisdiction over this civil action pursuant to  
16 28 U.S.C. § 1332 because the matter in controversy is between citizens of different  
17 states and exceeds the sum or value of \$75,000, exclusive of interest and costs.  
18

19 2.2 Venue is appropriate in the Eastern District of Washington pursuant to  
20 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to the  
21 claim occurred in this district and at least one of the named defendants is subject to  
22 personal jurisdiction in the district.  
23  
24  
25  
26

SECOND AMENDED COMPLAINT: 2

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1 2.3 Washington and Louisiana state law govern the substantive issues of  
2 liability, agency, and damages.

3  
4 **III. GENERAL ALLEGATIONS AND FACTUAL BACKGROUND**

5 3.1 Lamar's business consists of, among other things, erecting,  
6 maintaining, and leasing advertising space on outdoor signs and billboards.

7  
8 3.2 On November 9, 2000, James J. Kuntz ("Kuntz") filed a civil action,  
9 Docket No. CS-00415-RHW ("Kuntz Lawsuit"), against Kootenai Electric  
10 Cooperative, Inc. ("KEC"), and Lamar for injuries he allegedly incurred when a  
11 metal rod Kuntz was inserting into a vinyl sign came into contact with a high  
12 voltage power line installed and owned by KEC. Kuntz was on a billboard catwalk  
13 thirty feet above the ground at the time of the incident. As a result of the electric  
14 shock, Kuntz fell to the ground, losing both arms and almost all of his right thigh  
15 muscle.  
16  
17

18 3.3 In his Complaint, Kuntz alleged that Lamar owned the billboard in  
19 Athol, Idaho, from which Kuntz fell.  
20

21 3.4 At all pertinent times, CNA provided insurance covering Lamar for  
22 Kuntz's claims. The coverage included but was not limited to a General Liability  
23 Policy and a Commercial Umbrella Policy, Policy Nos. 189142730 and 189142856  
24  
25  
26

SECOND AMENDED COMPLAINT: 3

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1 (the "CNA policies"). The CNA policies were issued and delivered to Lamar in  
2 Louisiana.

3  
4 3.5 On information and belief, Runyan was a spectator at the trial in the  
5 Kuntz Lawsuit at CNA's request. Runyan was not Lamar's trial counsel in the  
6 Kuntz Lawsuit. Runyan never consulted with Lamar's trial counsel on any aspect  
7 of the Kuntz Lawsuit. Lamar never engaged Runyan for his professional services.  
8

9 3.6 Runyan negotiated and consummated a settlement with Kuntz and his  
10 family members allegedly on behalf of Lamar ("Settlement") prior to the time the  
11 jury rendered its verdict on Kuntz's claims. On information and belief, Runyan  
12 negotiated and consummated the Settlement after consultation with, and approval  
13 by, CNA.  
14

15  
16 3.7 Lamar was not notified, consulted, or advised of the settlement by  
17 Runyan or CNA. Runyan acted solely at CNA's request and instruction when  
18 negotiating and executing the settlement.  
19

20 3.8 The Settlement was a high-low agreement. The Settlement did not  
21 provide terms that addressed KEC's indemnity claims against Lamar, including  
22 such claims under Idaho Code § 55-2401 *et seq.*  
23

24 3.9 Defendants never advised Lamar that the Settlement terms would not  
25 protect Lamar from KEC's indemnification claims, including those based on Idaho  
26

SECOND AMENDED COMPLAINT: 4

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1 Code § 55-2401 *et seq.* Likewise, Defendants did not advise Lamar that it could or  
2 should participate in the Settlement negotiations or that the Settlement terms could  
3 expose Lamar to liability or judgment in excess of the CNA Policies limits of  
4 coverage.  
5

6 3.10 CNA placed its own interests above those of Lamar, its insured, at the  
7 expense of Lamar's best interests.  
8

9 3.11 The Kuntz Lawsuit proceeded to trial. On a special verdict form, the  
10 jury awarded total damages in the amount of \$18,306,504 to Kuntz; \$1,000,000 to  
11 Kuntz's spouse, Jennifer Kuntz; and \$125,000 to each of Kuntz's five children.  
12 The jury further apportioned the fault of the parties in the amount of 12% to Kuntz,  
13 38% to Lamar, and 50% to KEC, resulting in a total assessment against KEC under  
14 the jury award in the amount of \$9,965,752.  
15  
16

17 3.12 On information and belief, CNA authorized and/or directed Runyan to  
18 execute the settlement agreement. The settlement agreement was executed by  
19 Runyan purportedly on behalf of Lamar before Lamar was aware of settlement  
20 negotiations or the settlement.  
21

22 3.13 On or about December 30, 2002, KEC filed a civil action against  
23 Lamar, Case No. CV-02-08891, in the First Judicial District Court, County of  
24 Kootenai, State of Idaho ("KEC Lawsuit"). The KEC Lawsuit alleged KEC was  
25  
26

SECOND AMENDED COMPLAINT: 5

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1 entitled to indemnity from Lamar under Idaho Code § 55-2401 *et seq.* KEC further  
2 sought to recover for its costs and expenses in the Kuntz Lawsuit, plus KEC's trial  
3 costs and expenses incurred in the Kuntz Lawsuit.  
4

5 3.14 On or about October 23, 2003, the district judge in the KEC Lawsuit  
6 ruled on KEC's motion for summary judgment. The district judge granted KEC's  
7 summary judgment on its indemnity claim. The district judge never ruled on  
8 Lamar's affirmative defenses. The KEC Lawsuit was appealed and has since been  
9 remanded to the district judge to rule on Lamar's affirmative defense of laches.  
10

11 3.15 The Judgment rendered against Lamar in the KEC Lawsuit is in  
12 excess of the contractual CNA policies limits.  
13

14 3.16 CNA had the opportunity to settle the Kuntz and the KEC Lawsuits  
15 within the CNA Policies limits but failed to do so.  
16

17 3.17 CNA has and continues to provide a defense to Lamar in the KEC  
18 Lawsuit, but has never reserved its rights as to coverage with respect to KEC's  
19 claims and demands for indemnity under Idaho Code § 55-2401 *et seq.*  
20

21 3.18 Despite repeated requests, CNA failed to timely and properly respond  
22 to Lamar concerning the Settlement and the action CNA would take to protect  
23 Lamar as its insured from liability in the KEC Lawsuit.  
24  
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SECOND AMENDED COMPLAINT: 6

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1 3.19 The acts, errors, representations, and omissions by Runyan and CNA  
2 related to the negotiation and execution of the Settlement took place in Spokane,  
3 Washington.  
4

5 3.20 As a result of the acts, errors, and omissions of defendants, Lamar has  
6 been directly, proximately, and legally damaged in an amount equal to the claims  
7 and demands asserted by KEC in the KEC Lawsuit, including but not limited to,  
8 the jury award against KEC in the amount of \$9,965,752, together with legal  
9 interest accruing on such amount, and the costs and expenses, together with  
10 attorneys fees, asserted by KEC against Lamar in the KEC Lawsuit.  
11  
12

13 3.21 Defendants' acts, errors, and omissions have further damaged Lamar  
14 to the extent Lamar has to pay any amount to KEC as a result of, or related to, the  
15 KEC Lawsuit because any such payments damage the value of Lamar as a public  
16 company.  
17

18 3.22 Lamar raises and asserts the following alternative causes of action, for  
19 which defendants, CNA and Runyan are jointly and severally liable to Lamar.  
20

21 **IV. LEGAL MALPRACTICE**

22 4.1 Lamar reiterates and incorporates by reference the allegations  
23 contained in Sections I through III of this Complaint.  
24  
25  
26

SECOND AMENDED COMPLAINT: 7

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1 4.2 As a licensed Washington attorney taking action to settle a claim  
2 against Lamar, Runyan owed Lamar a duty to exercise his profession with care and  
3 prudence, and pursuant to the ethical obligations and requirements of the  
4 Washington State Bar, regardless of whether he actually was Lamar's legal  
5 counsel.  
6

7  
8 4.3 In the alternative, if Runyan was Lamar's legal counsel, Runyan owed  
9 Lamar the same duty of reasonable care.

10 4.4 Runyan breached the duty of reasonable care by failing to, among  
11 other things, timely communicate with and advise Lamar; determine the applicable  
12 law; understand the pertinent legal issues; avoid representing clients with  
13 conflicting interests; and settling the action against Lamar without obtaining  
14 Lamar's authority to execute the Settlement on Lamar's behalf.  
15  
16

17 4.5 As an actual and proximate result of Runyan's negligence, Lamar will  
18 incur damage to the extent judgment is entered against Lamar in the KEC Lawsuit  
19 and the amount of judgment exceeds the CNA policies limits.  
20

21 **V. NEGLIGENCE OF CNA**

22 5.1 Lamar reiterates and incorporates by reference the allegations  
23 contained in Sections I through IV of this Complaint.  
24  
25  
26

SECOND AMENDED COMPLAINT: 8

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1           5.2    In defending Lamar in the Kuntz and KEC Lawsuits, CNA owed  
2 Lamar a legal duty to act as a reasonably prudent insurance company under similar  
3 circumstances.  
4

5           5.3    CNA breached this duty of care.

6           5.4    As an actual and proximate result of CNA's negligence, Lamar has  
7 been damaged in an amount that exceeds the CNA Policies limits.  
8

9                   **VI. BREACH OF FIDUCIARY DUTY - CNA**

10           6.1    Lamar reiterates and incorporates by reference the allegations  
11 contained in Sections I through V of the complaint.  
12

13           6.2    CNA owes fiduciary duties to Lamar as Lamar's insurer in the  
14 handling of claims against Lamar that are covered by the insurance policy issued  
15 by CNA to Lamar.  
16

17           6.3    As a fiduciary, CNA was obligated to not place its interests above  
18 Lamar and not to take, among other things, any action that prejudiced Lamar in  
19 defending and resolving the Kuntz Lawsuit and the KEC Lawsuit.  
20

21           6.4    CNA's fiduciary duty further required CNA to timely and properly  
22 communicate and respond to Lamar as its insured concerning the Kuntz Lawsuit,  
23 the Settlement, and the KEC Lawsuit.  
24  
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SECOND AMENDED COMPLAINT: 9

15

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1 6.5 CNA breached these fiduciary duties owed to Lamar through the  
2 actions and omissions of its agents and representatives, including, but not limited  
3 to the actions and omissions of Runyan.  
4

5 6.6 As a proximate and actual result of CNA's breach, Lamar has been  
6 damaged in an amount that exceeds the CNA insurance policy limits.  
7

8 **VII. BREACH OF FIDUCIARY DUTY - RUNYAN**

9 7.1 Lamar reiterates and incorporates by reference the allegations  
10 contained in Sections I through VI of the Complaint.  
11

12 7.2 If Runyan was Lamar's legal counsel (a fact not admitted by Lamar),  
13 then Runyan also owed fiduciary duties to Lamar. Such fiduciary duty included  
14 the duty of loyalty to Lamar, which required sole representation of Lamar and  
15 acting in Lamar's best interest.  
16

17 7.3 Runyan breached the fiduciary duties he owed to Lamar.

18 7.4 As an actual and proximate result of Runyan's breaches of fiduciary  
19 duties owed to Lamar, Lamar has been damaged in an amount that exceeds the  
20 CNA Policies limits.  
21

22 **VIII. WAIVER**

23 8.1 Lamar incorporates and adopts by reference the allegations contained  
24 in Sections I through VII of this Complaint.  
25  
26

SECOND AMENDED COMPLAINT: 10

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1 8.2 CNA was obligated to timely and properly advise Lamar of CNA's  
2 position under the CNA Policies with respect to the Kuntz Lawsuit, the KEC  
3 Lawsuit, and the Settlement. Because CNA never issued a reservation of rights  
4 letter, CNA is obligated to Lamar in an amount not less than the CNA policies  
5 limits, which obligation CNA has acknowledged.  
6

7  
8 8.3 Under the circumstances, CNA undertook to negotiate and execute the  
9 Settlement without advising Lamar of the terms and consequences of the  
10 Settlement and without Lamar's consent. CNA further failed to timely and  
11 properly respond to Lamar with respect to its position under the insurance policy  
12 and applicable law as to matters concerning Runyan's involvement, and the action  
13 it would take to protect Lamar as its insured as to the Kuntz Lawsuit, KEC  
14 Lawsuit, and the Settlement. Such action and failures by CNA constitutes a waiver  
15 of all the CNA policies defenses, including policy limits.  
16

17  
18 8.4 As a result of CNA's waiver, CNA is liable and responsible for all  
19 liability and judgments rendered against Lamar in the KEC Lawsuit, including  
20 those in excess of the CNA policies limits.  
21

22 8.5 Alternatively, CNA's actions in defending the Kuntz Lawsuit, and  
23 negotiating and executing the Settlement, were done so in a manner that resulted in  
24 a loss of a favorable resolution of Kuntz's claims against Lamar; and was contrary  
25  
26

SECOND AMENDED COMPLAINT: 11

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1 to an insurer's defense of its insured without any reservation of rights. Such action  
2 by CNA as set forth herein resulted in prejudice to Lamar and CNA is estopped  
3 from raising coverage defenses, including those related to CNA policies limits.  
4

5 **IX. GOOD FAITH AND FAIR DEALINGS**

6 9.1 Lamar reiterates and incorporates by reference the allegations  
7 contained in Sections I through VIII of this Complaint.  
8

9 9.2 As Lamar's insurer, CNA owed Lamar a duty of good faith and fair  
10 dealings including the affirmative duty to adjust claims fairly and promptly and to  
11 make reasonable efforts to settle claims. This duty extended to the negotiation and  
12 the ultimate terms of the Settlement; timely and properly communicating and  
13 responding to Lamar; taking action that did not place itself above Lamar; and  
14 settling the KEC Lawsuit within the CNA policies limits.  
15  
16

17 9.3 CNA breached the duties of good faith and fair dealings, and the  
18 affirmative duty to adjust claims fairly and promptly.  
19

20 9.4 As a result of CNA's breaches of these duties, Lamar has been  
21 damaged in an amount that exceeds the CNA policies limits.  
22

23 **X. PRAYER FOR RELIEF**

24 WHEREFORE, The Lamar Company, LLC, prays for judgment as follows:  
25  
26

SECOND AMENDED COMPLAINT: 12

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1 1. For a decree declaring that defendants, as a matter of fact and law, are  
2 jointly and severally liable to Lamar for all damages, fees, expenses, and/or other  
3 amounts for which Lamar may sustain, or be responsible or liable for or related to,  
4 arising out of, or connected with Kuntz Lawsuit and/or the KEC Lawsuit as a result  
5 of defendant's negligence, breach of fiduciary duties, breach of contract, and/or  
6 breach of the duty of good faith and fair dealings;  
7

8  
9 2. For a decree declaring that defendants, as a matter of fact and law, are  
10 jointly and severally liable to Lamar for attorneys' fees, penalties, and legal  
11 interest to the extent allowed under applicable law; and  
12

13 3. For all other equitable and just relief as may be appropriate.

14 DATED this 26<sup>th</sup> day of January, 2006.

15  
16 LUKINS & ANNIS, P.S.

17  
18 By: Kelly Konkright

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*Attorneys for The Lamar Company, LLC*

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23  
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SECOND AMENDED COMPLAINT: 13

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 26<sup>th</sup>, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following, and/or I caused to be served a true and correct copy of the foregoing on the following in the manner indicated below:

Mr. Patrick S. Brady  
Mr. Carl E. Forsberg  
Forsberg & Umlauf, P.S.  
900 Fourth Ave Ste 1700  
Seattle, WA 98164-1039

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U.S. Mail ☐  
Overnight Mail ☐  
Hand Delivery ☐  
Facsimile ☐

Mr. Robert M. Sulkin  
McNaul Ebel Nawrot Helgren & Vance, P.L.L.C.  
600 University Street Ste 2700  
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MICHELE O'BRIEN  
of Lukins & Annis, P.S.

SECOND AMENDED COMPLAINT: 14

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